

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0472

SALES AND USE TAX
FOR TAX PERIODS: 2000

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Issues

1. Sales and Use Tax: Medical Equipment and Devices

Authority: IC 6-2.5-2-1, IC 6-2.5-5-18 (a), IC 6-8.1-5-1, 45 IAC 2.2-5-28 (h), Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court, (1994).

The taxpayer protests the imposition of tax on a van and adaptive equipment.

2. Tax Administration: Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the penalty.

Statement of Facts

The Indiana Department of Revenue assessed gross retail tax, interest and penalty on a van. The taxpayer protested the assessment in a timely fashion. Further facts will be presented as necessary.

1. Sales and Use Tax: Medical Equipment and Devices

Discussion

The taxpayer lost the lower part of both of his legs in a 1986 industrial accident. On October 2, 2000, the taxpayer purchased a van for his personal transportation. The taxpayer also purchased adaptive equipment such as a wheel chair lift and hand controls so that he could operate the van. The taxpayer had the automotive dealer fill out an exemption statement indicating that the van was exempt from sales tax because the van and the adaptive equipment had been prescribed for the taxpayer by a medical practitioner. The taxpayer presented this statement to the Bureau of Motor Vehicles which titled the van without collecting sales tax.

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. There are several statutory exemptions from the tax including one for medical equipment and devices. IC 6-2.5-5-18 (a). It is established law that all tax exemptions must be strictly construed against taxpayers. Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994). The presumption is that all Indiana Department of Revenue tax assessments are accurate and taxpayers bear the burden of proving that an assessment is incorrect. IC 6-8.1-5-1.

The taxpayer contends that the van and adaptive equipment qualify for exemption pursuant to the following provisions of IC 6-2.5-5-18 (a):

Sales of artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical equipment, supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

To qualify for this exemption from the state gross retail tax, the van and adaptive equipment must meet two tests. The van and adaptive equipment must have been prescribed by a medical practitioner licensed to issue prescriptions. In this instance, the taxpayer produced a copy of a prescription for the van and adaptive equipment and a statement from a doctor of osteopathy. This test is, therefore, met.

It must also be determined if the van and adaptive equipment are the types of items referred to in the exemption. The statute provides exemption for "medical equipment, supplies and devices." That term is defined at 45 IAC 2.2-5-28 (h) as "those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body." The issue to be determined is whether the van and the adaptive equipment meet that definition.

The taxpayer contends that the van and adaptive equipment meet the regulatory definition because they allow him to access life's necessities such as the grocery store and medical professionals. The Indiana Department of Revenue agrees that the van and adaptive equipment allow the taxpayer to access life's necessities. That is not, however, the standard as stated in the regulation. The regulatory definition requires that the van and the equipment are "directly required to alleviate injury to malfunction of, or removal of a portion of the purchaser's body." The van provides the taxpayer with the opportunity to travel on the roads just like a van does for any other person in Indiana.

The van does not meet the tests of the regulatory definition and does not qualify for exemption. The adaptive equipment such as the chair lift and hand controls are the

equipment which allow the taxpayer to drive the van despite the loss of his legs. The adaptive equipment meets the two tests of the regulatory definition and qualifies for exemption.

The taxpayer did not offer any evidence that the sales tax charged by the Indiana Department of Revenue was based on the sale of exempt adaptive equipment. The sales tax was computed based upon the sales price of the van from the automobile dealer. Therefore the taxpayer owes the entire assessment of sales tax.

The taxpayer also contends that other vans have been afforded tax exempt status and therefore this van should also be afforded tax exempt status. The only van and adaptive equipment under consideration in this proceeding is the van the taxpayer purchased on October 2, 2000. For the reasons enumerated above, this van is subject to the sales tax and the adaptive equipment is exempt from the sales tax.

Finding

The taxpayer's protest is denied.

2. Tax Administration: Penalty

Discussion

The taxpayer's final point of protest concerns the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.

The taxpayer has purchased vans and adaptive equipment in the past. On one occasion, the taxpayer paid the tax, filed a claim for refund and appealed the denial of the claim for refund in the Indiana Tax Court. The Court found in an unpublished decision that the taxpayer owed gross retail tax on the van and that the adaptive equipment qualified for exemption from the gross retail tax. The taxpayer's failure to pay the sales tax on the purchase of a van after the court decision constitutes negligence because the ordinary reasonable taxpayer would realize that the court decision was dispositive of the issue.

Finding

The taxpayer's protest of the negligence penalty is denied.

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